

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GARY FRIEDRICH ENTERPRISES, LLC, et al.,

Plaintiffs,

-against-

MARVEL ENTERPRISES, et al.,

Defendants.

08-CV-01533 (BSJ)(JEF)

**DECLARATION OF CHARLES S. KRAMER IN SUPPORT OF PLAINTIFFS'/
COUNTERCLAIM DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Charles S. Kramer, declare under penalty of perjury as follows:

1. I am a principal of Riezman Berger, P.C. and I am duly admitted to practice in the states of Missouri and Illinois and the Eastern District of Missouri and have been admitted pro hac vice before this court. I and my firm, together with the law firms of Roth Evans, P.C. and Simon Lesser PC, are counsel to Plaintiffs /Counterclaim Defendants Gary Friedrich and Gary Friedrich Enterprises, LLC in this action.

2. Annexed hereto as Exhibit 1 is a true and correct copy of excerpts from the deposition of Gary Friedrich, conducted on April 1, 2011, which are cited in the accompanying Memorandum of Law in Support of Plaintiffs'/ Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

3. Annexed hereto as Exhibit 2 is a true and correct copy of excerpts from the deposition of Roy Thomas, conducted on April 12, 2011 and April 13, 2011, which are cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

4. Annexed hereto as Exhibit 3 is a true and correct copy of excerpts from the deposition of Stan Lee, conducted on May 4, 2011, which are cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

5. Annexed hereto as Exhibit 4 is a true and correct copy of excerpts from the deposition of Paul Schade, conducted on March 31, 2011, which are cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

6. Annexed hereto as Exhibit 5 is a true and correct copy of excerpts from the deposition of David George, conducted on April 14, 2011, which are cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

7. Annexed hereto as Exhibit 6 is a true and correct copy of excerpts from the deposition of Michael Ploog, conducted on May 10, 2011, which are cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

8. Annexed hereto as Exhibit 7 is a true and correct copy of excerpts from the deposition of John Turitzin, conducted on May 10, 2011, which are cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

9. Annexed hereto as Exhibit 8 is a true and correct copy of Marvel Spotlight No. 5, which is marked as Exhibit 3 at the Deposition of Gary Friedrich, conducted on April 1, 2011, which are cited in the accompanying Memorandum of Law in Support of

Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

10. Annexed hereto as Exhibit 9 is a true and correct copy of Docket No. 34, Order, which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

11. Annexed hereto as Exhibit 10 is a true and correct copy of Docket No. 44, Order Directing Separate Trials, which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

12. Annexed hereto as Exhibit 11 is a true and correct copy of Docket No. 48, Counterclaims, which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

13. Annexed hereto as Exhibit 12 is a true and correct copy of Docket No. 50, Stipulation and Order Supplementing August 3, 2010 Order Directing Separate Trial, which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

14. Annexed hereto as Exhibit 13 is a true and correct copy of the First Amended Complaint, which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

15. Annexed hereto as Exhibit 14 is a true and correct copy CBA (Comic Book Artist) Interview, produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MVL-00009988 – 00010001 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs’/Counterclaim Defendants’ Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

16. Annexed hereto as Exhibit 15 is a true and correct copy of an email from Roy and Dann Thomas to Gary Friedrich, produced by Roy Thomas as part of discovery in this proceeding and identified by the bates numbers Thom0000128, which is cited in the accompanying Memorandum of Law in Support of Plaintiffs’/Counterclaim Defendants’ Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

17. Annexed hereto as Exhibit 16 is a true and correct copy of the June 26, 2009 Magistrate Order, Report and Recommendation, which is cited in the accompanying Memorandum of Law in Support of Plaintiffs’/Counterclaim Defendants’ Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

18. Annexed hereto as Exhibit 17 is a true and correct copy of an article by Jeff McLaughlin titled “An Afternoon with Stan Lee” produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MVL-00013340 – 00013370, which is cited in the accompanying Memorandum of Law in Support of Plaintiffs’/Counterclaim Defendants’ Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

19. Annexed hereto as Exhibit 18 is a true and correct copy of a letter from Marvel Publishing to Gary Friedrich, produced by Gary Friedrich as part of discovery in this proceeding and identified by the bates numbers Friedrich 000020 which is cited in the accompanying

Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

20. Annexed hereto as Exhibit 19 is a true and correct copy of the Response of Defendant Marvel Characters, Inc. to Plaintiffs' Contention Interrogatories which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

21. Annexed hereto as Exhibit 20 is a true and correct copy of the Response of Defendants Marvel Entertainment, LLC, Marvel Characters B.V., Marvel Worldwide, Inc., Marvel International Character Holdings, LLC and MVL International C.V. to Plaintiffs' Contention Interrogatories which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

22. Annexed hereto as Exhibit 21 is a true and correct copy of the Response of Defendants Marvel Studios, Inc., Hasbro, Inc., Take-Two Interactive Software, Inc., Columbia Pictures Industries, Inc., Crystal Sky LLC, Relativity Media, LLC, Michael De Luca Productions, Inc., and Sony Pictures Entertainment Inc., to Plaintiffs' Contention Interrogatories which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

23. Annexed hereto as Exhibit 23 is a true and correct copy of Amazing Spiderman #111, which is marked as Exhibit 1 at the Deposition of Stan Lee, conducted on May 4, 2011, which are cited in the accompanying Memorandum of Law in Support of

Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

24. Annexed hereto as Exhibit 24 is a true and correct copy of Docket No. 180, Memorandum and Order dated June 21, 2011, which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

25. Annexed hereto as Exhibit 25 is a true and correct copy of Docket No. 112, Answer to First Amended Complaint dated April 18, 2011, which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

26. Annexed hereto as Exhibit 26 is a true and correct copy Spotlight #5 Reprinted in 1992, produced by Sony as part of discovery in this proceeding and identified by the bates numbers Sony 005465 - 005509 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

27. Annexed hereto as Exhibit 27 is a true and correct copy Copyright Assignment and Intellectual Property Assignment dated March 29, 2007, produced by Gary Friedrich as part of discovery in this proceeding and identified by the bates numbers Friedrich 000007 - 000010 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

28. Annexed hereto as Exhibit 29 is a true and correct copy numerous emails between Carol Platt and Deborah Bruenell, produced by Marvel as part of discovery in this

proceeding and identified by the bates numbers MVL 00014236 - 00014245 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

29. Annexed hereto as Exhibit 30 is a true and correct copy a letter between Carol Platt and Deborah Bruenell dated October 13, 2003, produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MVL 00015712 - 15713 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

30. Annexed hereto as Exhibit 31 is a true and correct copy of a facsimile between Allen Lipson and Deborah Bruenell dated August 20, 2002, produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MVL 00015716 - 15730 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

31. Annexed hereto as Exhibit 32 is a true and correct copy a letter between Jared Jussim and Arthur Aaronson dated April 6, 2004, produced by Gary Friedrich as part of discovery in this proceeding and identified by the bates numbers Friedrich 000026 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

32. Annexed hereto as Exhibit 33 is a true and correct copy of a letter between Arthur Aaronson and Eli Baird, dated June 17, 2004 and produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MVL 00014229 - 00014230 which is cited in the

accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

33. Annexed hereto as Exhibit 34 is a true and correct copy of an email between Roy Thomas and Gary Friedrich dated May 31, 2006, produced by Gary Friedrich as part of discovery in this proceeding and identified by the bates numbers Friedrich 000250 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

34. Annexed hereto as Exhibit 35 is a true and correct copy of an email between Roy Thomas and Tim Boal dated February 22, 2010, produced by Roy Thomas as part of discovery in this proceeding and identified by the bates numbers Thom0000213 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

35. Annexed hereto as Exhibit 36 is a true and correct copy of Docket No. 52, Memorandum in Support of Motion to Dismiss Counterclaims, which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

36. Annexed hereto as Exhibit 37 is a true and correct copy of a Copyright Certificate of Registration dated February 26, 2007 and produced by Gary Friedrich as part of discovery in this proceeding and identified by the bates numbers Friedrich 000017 – 000019 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

37. Annexed hereto as Exhibit 38 is a true and correct copy of a Copyright Assignment and Agreement dated January 1, 1972 and produced by Marvel as part of discovery

in this proceeding and identified by the bates numbers Marvel 00009521 - 00009523 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

38. Annexed hereto as Exhibit 39 is a true and correct copy of a letter between David Chervitz and the Copyright Receiving and Processing Department dated February 21, 2007 and produced by Friedrich as part of discovery in this proceeding and identified by the bates numbers Friedrich 000001 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

39. Annexed hereto as Exhibit 40 is a true and correct copy of a Letter between Eli Baird and Arthur Aaronson dated April 14, 2004 and produced by Friedrich as part of discovery in this proceeding and identified by the bates numbers Friedrich 000028 - 000036 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

40. Annexed hereto as Exhibit 41 is a true and correct copy of a email between David Chervitz and Jane Rinard dated March 8, 2007 and produced by Friedrich as part of discovery in this proceeding and identified by the bates numbers Friedrich 000002 – 000003, and 000096 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

41. Annexed hereto as Exhibit 42 is a true and correct copy of Comic Book Artist #13 and produced by Marvel as part of discovery in this proceeding and identified by the bates


numbers Marvel 00015406 - 00015431 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

42. Annexed hereto as Exhibit 43 is a true and correct copy of the Delaware Secretary of State Division of Corporation which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

43. Annexed hereto as Exhibit 44 is a true and correct copy of Marvel Spotlight #5 Reprinted in February 1974 and produced by Marvel as part of discovery in this proceeding and identified by the bates numbers Marvel 00023975 - 00024010 which is cited in the accompanying Memorandum of Law in Support of Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment and Statement of Material Facts Pursuant to Local Rule 56.1.

Dated: October 17, 2011

Respectfully submitted,

By: 
Charles S. Kramer